

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )

Amendment of Section 2.106 of the )  
Commission's Rules to Allocate )  
Spectrum at 2 GHz for Use )  
by the Mobile Satellite Service. )

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ET Docket No. 95-18

To: The Commission

**PETITION FOR PARTIAL RECONSIDERATION**

Cosmos Broadcasting Corporation, Cox Broadcasting, Inc., Media General, Inc. (collectively, the "Joint Commenters"),<sup>1</sup> by their attorneys and pursuant to Section 1.429 of the rules of the Federal Communications Commission (the "Commission"),<sup>2</sup> hereby submit this Petition for Partial Reconsideration of the Commission's *Second Report and Order and Second Memorandum Opinion and Order* in ET Docket No. 95-18 (the "Order").<sup>3</sup> By this Petition, the Joint Commenters request that the Commission adopt a simple and effective means of resolving an inherent inconsistency in the rules adopted in the Order. A grant of this Petition would serve the public interest by confirming that, in accordance with the Commission's spectrum clearing policies, licensees in the broadcast auxiliary service ("BAS") who serve small and mid-sized television markets will not be required to absorb the expenses required to provide additional spectrum to new licensees in the mobile satellite service ("MSS").

<sup>1</sup> The Joint Commenters each own full-power broadcast television stations. The majority of these stations operate primarily in small and mid-sized television markets in the Southeast.

<sup>2</sup> 47 C.F.R. § 1.429.

<sup>3</sup> FCC 00-233 (July 3, 2000); 65 Fed. Reg. 48,174 (Aug. 7, 2000). The instant Petition is timely filed within thirty days of the publication of the Order in the *Federal Register*. 47 C.F.R. §§ 1.4, 1.429(d).

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In the Order, the Commission reallocated certain spectrum used by the BAS and fixed microwave services to the new MSS. Consistent with spectrum clearing policies adopted in similar proceedings, the Order provides that a displaced BAS licensee is entitled to fully constructed, tested, authorized, and operational new facilities.<sup>4</sup> Under newly adopted Section 74.690(d), a BAS licensee need not relocate until “alternative facilities are available to it for a reasonable time to make adjustments, determine comparability, and ensure a seamless handoff.”<sup>5</sup> Indeed, that rule further provides, “If within one year after the relocation to new facilities the [BAS licensee] demonstrates that the new facilities are not comparable to the former facilities, the MSS Licensee must remedy the defects.”

During the first phase of the Commission’s two-phase transition plan, BAS Channel 1 (1990-2008 MHz) will be reallocated to MSS, thus forcing all BAS licensees nationwide to vacate that spectrum. The Commission apparently believed that Phase I relocation would be relatively inexpensive and easy for broadcasters to accomplish in television markets other than the Top 30, because broadcasters in below-30 markets presumably could reprogram or retune and filter their BAS equipment to channels other than BAS Channel 1.<sup>6</sup> Accordingly, the Commission required MSS licensees to relocate BAS licensees only in the thirty largest television markets prior to commencement of operation.

In fact, a number of BAS licensees in markets other than the Top 30 (collectively, the “Exceptional BAS Licensees”) operate critical news-gathering and other broadcasting equipment on BAS Channel 1 that cannot be reprogrammed or retuned and filtered to accommodate the new Phase 1 channel plan. In some cases, their equipment was not manufactured with the capability of

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<sup>4</sup> Order at ¶ 112.

<sup>5</sup> 47 C.F.R. § 74.690(d).

<sup>6</sup> Order at ¶ 111.

operating on different channels. In other cases, equipment manufacturers have ceased operating and therefore are unavailable to perform the necessary channel changes.

For example, four of Media General's television stations in below-30 markets fall into this category. In particular, KALB-TV, Alexandria, Louisiana (DMA 173), and KBSD-TV, Ensign, Kansas (DMA 65), operate studio-to-transmitter links ("STLs") on BAS Channel 1 that cannot be reprogrammed to different channels. In addition, WBTW(TV), Florence, South Carolina (DMA 112), and KWCH-TV, Hutchinson, Kansas (DMA 65), operate BAS Channel 1 intercity relays ("ICRs") that also cannot be reprogrammed to accommodate the reallocation of BAS Channel 1.

Under Section 74.690(d), these stations and other Exceptional BAS Licensees may continue to use their BAS Channel 1 STL and ICR facilities until new, fully constructed, tested, authorized, and operational replacement equipment performs adequately. Under Section 74.690(e) however, these same licensees must secure replacement facilities prior to the commencement of MSS – expected to occur in just eighteen to twenty-four months – to avoid receiving interference from MSS communications and to accommodate the Commission's deletion of BAS Channel 1.

It is unclear from the Order and the rules adopted therein how the Exceptional BAS Licensees and MSS licensees should reconcile these conflicting obligations. Consequently, the Joint Commenters respectfully request that the Commission reconsider its Order and confirm that its spectrum clearing policies and rules, as expressed clearly in Section 74.690(d), will not force BAS licensees serving smaller markets to shoulder the expenses of vacating spectrum for new MSS licensees.

As such, MSS licensees should be obligated to work with each Exceptional BAS Licensee regardless of the size of the broadcaster's market before the MSS licensees begin operating with BAS Channel 1 spectrum. To this end, the Commission should require that MSS licensees relocate those existing BAS licensees, regardless of market, whose equipment cannot be reprogrammed to

accommodate the Phase 1 channel plan. In other words, the Exceptional BAS Licensees should be treated in the same manner as BAS licensees in the Top 30 markets.

To minimize the burden on MSS licensees of identifying the affected broadcasters, the Commission could require that the Exceptional BAS Licensees self-identify through the submission of a statement to the Commission detailing the technical limitations preventing their abandonment of BAS Channel 1 spectrum. Under this procedure, MSS licensees would have no obligation to relocate BAS licensees that fail to submit a timely and sufficient statement.

Clarifying the obligations of certain BAS licensees in this manner will facilitate the orderly and timely reallocation of 2 GHz spectrum without imposing undue expenses and uncertainty on small and mid-size market broadcasters. Accordingly, a grant of the instant Petition would serve the public interest. For the foregoing reasons, the Joint Commenters urge the Commission to grant this Petition for Partial Reconsideration.

Respectfully submitted,

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